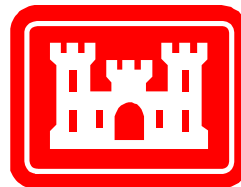

Policy Update



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Ms. Betty Lou Edwards, Editor

THE WATER RESOURCES DEVELOPMENT ACT OF 1999

The Water Resources Development Act of 1999 (WRDA 99) passed unanimously in both the House and Senate on August 5, 1999. The President signed it into law (Public Law 106-53) on August 17, 1999. Because it is an authorization law, a WRDA approves projects, studies and programs, and authorizes appropriations, but does not appropriate funds. It has been estimated that, if the entire act were funded, the total cost would be \$6.1 billion, with \$4.2 billion as the Federal share and \$1.9 billion in non-Federal funds.

Projects. WRDA 99 authorizes 45 projects in 19 states and Puerto Rico. If funded, these projects would cost an estimated \$1.41 billion in Federal money and \$88 million in non-Federal funds, for a cost-shared total of \$2.3 billion.

Continuing Authorities Program. WRDA 99 also increases the federal spending limits for several of the Continuing Authorities Programs (CAP) – those relating to flood control, navigation and mitigating damages, and hurricane and storm damage reduction. CAP operates under several laws delegating the Chief of Engineers authority to approve certain projects, up to specified dollar amounts (subject to fund availability).

Initiatives.

Section 212 Authority – The act includes a Flood Hazard Mitigation and Riverine Ecosystem Restoration Program (informally known as Challenge 21), with authorized funding of \$200 million over a five-year period. This initiative focuses on more sustainable solutions to flooding problems by examining non-structural solutions in flood-prone areas while retaining traditional measures where appropriate.

Other Environmental Provisions – In addition to authorizing environmental studies and projects and establishing Challenge 21, WRDA 99:

- Reduces the non-Federal share to 35 percent and increases the annual program limit for environmental dredging; i.e. removing contaminated sediments;
- Increases authorization for funding to test sediment decontamination technologies;
- Directs a comprehensive study of Great Lakes

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basin and the collection, compilation, and analysis of information from all sources relevant to the Great Lakes biohydrological system;

- Increases the annual authorized funding level for the upper Mississippi River Environmental Management Plan and authorizes a similar environmental protection and enhancement program for the Missouri and middle Mississippi Rivers; and
- Increases authorized appropriations or authorizes new programs for watersheds or environmental restoration for ten new areas.

Shore Protection – The Act gradually phases in a new cost-sharing formula for periodic shoreline nourishment. It changes the split from the Federal Government's portion being 65 percent and the non-Federal share being 35 percent to a 50-50 cost-share becoming effective on the program carried out after January 1, 2003. The Act also requires a national study of the Nation's shores and creating a National Coastal Data Bank.

Studies – WRDA 99 authorizes and directs 55 project or location-specific studies and several programmatic or regional studies. The programmatic or regional studies involve:

- Cost-sharing for construction, operation, and maintenance of deep draft harbors;
- The entire Great Lakes basin to ensure best use of water resources;
- The Great Lakes navigation system's effectiveness;
- Nutrient loading caused by dredged material disposal in the Chesapeake Bay;
- Erosion damage to levees and other flood control structures on the upper Mississippi and Illinois Rivers;
- A plan to address water and related land resource problems in the upper Mississippi and Illinois River basins; and

- Controlling and managing waterborne debris in the Susquehanna River Basin, for New York, Pennsylvania and Maryland, and the upper Chesapeake Bay, Maryland.

Modifications – The Act authorizes modifying 91 projects or programs that, if funded, has an estimated total cost of \$1.12 billion. Modifications include 29 projects and increases in program limits for three regional programs (one in Pennsylvania and two in West Virginia). It deauthorizes all or part of 12 navigation projects – all in Connecticut and Maine – and reauthorizes 6 projects in Florida, Michigan, North Dakota, and Tennessee.

The Legislative Initiatives Branch wishes to thank all the great field folks who helped support the enactment of WRDA 99. If you want more on WRDA 99, please visit the Corps webpage for Legislative Information at <http://www.usace.army.mil/inet/functions/cw/cecwa/branches/legislative/leginfo.htm> where you can link to the full Conference Report language and find other key information.

POC: Larry Prather, CECW-AL, 202-761-0119

POLICY GUIDANCE LETTER NO. 56 (PGL 56), SECTION 207 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1996, BENEFICIAL USE OF DREDGED MATERIAL

A draft of PGL 56 was circulated for Division and District review late in 1998. The PGL has been revised in response to the comments and will be issued as a final PGL in 1999. Section 207 allows the selection of a disposal method that is not the least-cost to achieve environmental benefits. Incremental costs to achieve the environmentally beneficial use would be shared on a 75 percent Federal and 25 percent non-Federal basis. Section 207 will be a useful authority in adding environmentally beneficial use of dredged material

to new navigation projects or project modifications where the project was authorized without provision for beneficial use.

POC: Rich Worthington, CECW-AA, 202-761-1184

STATUS OF NEW ABILITY TO PAY RULE

Section 202(b) of the Water Resources Development Act of 1996 (WRDA 96) directed the Assistant Secretary of the Army (Civil Works) (ASA[CW]) to revise the existing ability to pay procedures based upon criteria included in that section. U.S. Army Corps of Engineers Headquarters, with assistance from staff of the Institute for Water Resources, developed new draft procedures which were provided to the OASA(CW) by the Director of Civil Works on October 17, 1997. The current status is that the draft is under review and revisions have been made as a result of coordination with OASA(CW) staff. Once a final approval is received from OASA(CW) and the Office of Management and Budget, the draft Rule will be published in the *Federal Register* for public comment. Upon completion of the public comment period, the Rule will be finalized. It is uncertain exactly how long this process will take. You should also be aware that there is proposed legislation that would impact the current draft of the potential new ability to pay rules so that they would apply to reductions in all non-Federal costs, not just cash contributions. If this change is enacted, the current draft rules would have to be revised. Until a new Rule has been promulgated, the existing 1995 procedures should continue to be used.

POC: Harry Shoudy, CECW-AA, 202-761-1977

MODEL DESIGN AGREEMENT

The Director of Civil Works sent guidance on the model design agreement to the Major Subordinate Commands (MSC's) by memorandum dated August

3, 1998. The model design agreement, effective October 1, 1998, shall be used when a non-Federal sponsor is willing to pay 25 percent of design-type activities whenever preconstruction engineering and design (PED) and engineering and design (E&D) are funded from General Investigations (GI), Construction, General (CG), or Operations and Maintenance, General (O&M) appropriations and not covered by an executed project cooperation agreement (PCA). The only exception to the requirement to use the model design agreement is for non-cost shared projects, Dam Safety Assurance Program (DSAP) projects, Continuing Authorities Program (CAP) projects, Environmental Restoration Programs, Environmental Infrastructure Programs, and projects funded initially for design-type activities prior to fiscal year (FY) 1999.

District Commanders are authorized to execute design agreements that do not deviate from the model design agreement. The design agreements that deviate from the model design agreement should be forwarded to HQUSACE, CECW-AR, for review and submittal to the Office of the Assistant Secretary of the Army (Civil Works) for approval. The review and approval process will take a minimum of 60 days. Within 21 days after execution of any design agreement, an electronic copy and photocopy of the executed design agreement shall be provided to CECW-AR.

The approved model design agreement checklist and a link to the Office of the Chief Counsel's homepage are located at:

<http://www.usace.army.mil/inet/functions/cw/cecwa/branches/guidance/PDF/mdesagrm.pdf>

The model design agreement is also accessible at:

<http://www.hq.usace.army.mil/cecc/ccpca.htm>

POC: Alan Lauwaert, CECW-AG, 202-761-0125

ECOSYSTEM RESTORATION POLICY GUIDANCE

Two new guidance documents on ecosystem restoration should be published in the next several weeks! They are:

- *ER 1165-2-501, Civil Works Ecosystem Restoration Policy*, and
- *EP 1165-2-502, Ecosystem Restoration – Supporting Policy Information*.

These new documents consolidate existing policy from a variety of sources, including Policy Guidance Letters and other recent documents. The guidance also clarifies a number of points that have been confusing or frequently misunderstood in the course of our experiences with restoration studies and projects (e.g., issues associated with water quality, recreation, remediation, real estate). The guidance will be published as two documents: the engineer regulation (ER) which provides the fundamental policy guidance, and the accompanying engineer pamphlet (EP), which provides additional explanation and rationale for the policy summarized in the ER.

“Thank you” to the many contributors who reviewed the draft documents! A number of changes have been made in response to comments received both from the field and within headquarters.

The ecosystem restoration guidance has broad applicability to initiatives undertaken via individual, programmatic, and standing authorities. Additional opportunities in which the Corps can participate in ecosystem restoration through Civil Works programs and activities are identified and encouraged. The guidance is relevant to many Civil Works functional elements and should receive broad distribution once it is available in final form.

POC: Lynn Martin, CEWRC-IWR-P,
703-428-8065

CIVIL WORKS POCKET REFERENCE

The U.S. Army Corps of Engineers Civil Works Pocket Reference (CWPR), first edition dated 1998, summarizes authorities and policies governing the Civil Works Program of the Corps of Engineers, including policy implementation related to the Water Resources Development Act of 1996 (Public Law 104-303). Interesting facts and figures related to the Civil Works Program are also included. This 122-page publication, contained in a black plastic folder imprinted with the Corps trademark in gold leaf, was prepared by the Institute for Water Resources (IWR) for the Policy Division of the Directorate of Civil Works, HQUSACE, and is designed to fit into a suit jacket/vest pocket or purse.

The CWPR has been printed and distributed in limited quantity to all Corps Major Subordinate Commands (MSC's), District Commands (DC's), Field Operating Agencies (FOA's), Laboratories, HQ offices, and selected public agencies that have working relations with the Corps. The CWPR (revised with some minor corrections, the addition of some conveniences, and dated August 1998) is now accessible on the HQUSACE internet at the following address/URL (in portable document format (".pdf") which requires Adobe Acrobat reader to be read):

<http://www.usace.army.mil/inet/functions/cw/cecwa/branches/guidance/PDF/pktre898.pdf>

There will be another limited printing of the CWPR this fall.

POC: Guy B. Ensmann, CECW-AG, 202-761-0124
or e-mail: guy.b.ensmann@usace.army.mil

WATER SUPPLY HANDBOOK

Work has been completed on the revision to IWR Report 96-PS-4, dated December 1996. The revised report (IWR Report 96-PS-4, dated December 1998) was distributed in early February 1999. The new report updates the first five chapters and four appendices to incorporate the recent revisions to ER 1105-2-100 and to recognize the realignment of division boundaries. The new report also includes four additional chapters and two appendices covering the topics of "Modeling and Water Supply Planning," "Water Conservation and Planning for Drought," "Water Supply Needs Analysis," and "Management of Water Control Systems." The report is intended to serve as a comprehensive desk top reference on water supply topics that are spread throughout a voluminous body of Corps engineer regulations, manuals, technical letters, and memoranda, as well as literature from the private sector. The information is intended for easy access and reference purpose only and is not intended to serve as a substitute for Headquarters policy or implementation guidance. This document is available on the Institute for Water Resources Homepage at:

<http://www.wrsc.usace.army.mil/iwr/>

The document will be updated as necessary and revisions will be posted on the internet at this address.

POC: Ted Hillyer, CEWRC-IWR-P, 703-428-6140

EP 1165-2-1, DIGEST OF WATER RESOURCES POLICIES AND AUTHORITIES

This publication, dated February 15, 1996, is being updated to reflect pertinent provisions of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303 enacted 12 October 1996) and related implementing policy guidance (e.g., Policy Guidance Letters 46-61). The updated EP 1165-2-1 will be on the HQUSACE information net before the end of calendar year 1999.

*POC: Guy B. Ensmann, CECW-AG, 202-761-0124
or e-mail: guy.b.ensmann@usace.army.mil*